IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3644 of 2001

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUPER HANDLING PVT LTD

Versus

RASHTRIYA MAJDOOR UNION & ANR.

Appearance:

1. Special Civil Application No. 3644 of 2001

MR KM THAKAR for M/S TRIVEDI & GUPTA for Petitioners Nos. 1-2

MR KEYUR GANDHI for NANAVATI ASSOCIATES for Respondent No. 1

MR MUKUL SINHA for Respondent No. 2

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 18/09/2003

ORAL JUDGEMENT

Heard the learned advocates.

RULE returnable today.

Mr.Gandhi and Mr.Sinha waives service of rule on behalf of the respective respondent.

With the consent of the learned advocates the matter is heard and disposed of today.

The petitioner, a labour contractor, challenges common order dated 23rd October, 2000 made by the Industrial Court, Vadodara on Complaints Nos.231/2000 and 237/2000 in Reference IT No.9/2000 in so far as the learned Judge has ordered the petitioner to maintain status quo as to the service conditions of the concerned workmen.

Mr.Thakar has submitted that the complaints made by the workmen under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') are not maintainable and no interlocutory order could have been made pending Reference as it has been done in the present case. Mr.Thakar has read out the Complaint No.231/2000. In the said Complaint, the workmen have made categorical statement that, "the opponents above are planning to discontinue the workmen during the pendency of the dispute before this Hon.Tribunal, though the I.D. Act under Section 33 specifically prohibit any such adverse changes in the service conditions of the workmen which existed immediately prior to the reference." Mr.Thakar has submitted that it is apparent that the aforesaid Complaint had been made under an apprehension that the services of the concerned workmen would be terminated. In fact, no action adverse to the workmen was taken by either of the employers (i.e. the immediate employer or the principal employer). For filing complaint under Section 33-A it is a condition precedent that the concerned employer must have acted in violation of Section 33 of the Act. No complaint can be maintained on mere apprehension.

In support of his argument Mr.Thakar has relied upon the judgment of the Hon'ble Supreme Court in the matter of Blue Star Employees' Union v/s. Ex. Off. Principal Secy. to Government and another [AIR 2000 S.C. 3110] and of this Court in the matter of Nadiad Municipality v/s. Ghanshyam Barot & Ors. [1998(2) G.L.H. 728].

In the matter of Blue Star Employees' Union (supra), the Hon'ble Supreme Court has held that, "...A complaint can be made to the Tribunal under S.33-A if

there has been violation or contravention of the provisions of S.33 of the Act and if it is found that there has, in fact, been such a contravention the Tribunal can proceed to adjudicate the dispute contained in a complaint on its merits. Thus violation or contravention of the provisions of S.33 of the Act would be the basic question that arises for consideration and before giving any relief to an aggrieved employee under this section, the Tribunal has to find out whether the employer's action falls within one of the prohibitions contained in S.33 of the Act." Similar is the view expressed by this Court in the matter of Nadiad Municipality (supra). The learned Judge has observed that, "...the Labour Court before giving relief to an employee under S.33-A has to find out first that there has been a contravention of provisions of S.33."

Hence, it is crystal clear that unless there has, in fact, been a contravention of Section 33 of the Act no complaint under Section 33-A would be maintainable nor would the Court be justified in giving relief on such complaint.

In the present case, admittedly, the complaint has been made on a mere apprehension that the services of the concerned workmen would be terminated. Indisputably, no action has been taken by either of the employers which shall have effect of altering the service condition of the concerned workmen to their prejudice pending Reference. Hence, the complaints lodged before the Industrial Court are not maintainable. No relief, therefore, could have been granted by the learned Judge. Besides, there is no warrant for presumption that if any alteration in the service condition of the concerned workmen to their prejudice is called for the permission as envisaged under Section 33(1) of the Act will not be sought.

In above view of the matter the petition is allowed. The impugned order dated 23rd October, 2000 made in Complaints Nos.231/2000 and 237/2000 in Reference IT No.9/2000 pending before the Industrial Court, Vadodara is quashed and set aside. Rule is made absolute. The parties shall bear their own costs.

(Ms. R.M.Doshit, J.)
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